

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the KURT A. BUNDE
DECEASED TRUST.

DENISE BUNDE-MORRIS/PERSONAL
REPRESENTATIVE,

Petitioner-Appellant,

V

CENTURY BANK & TRUST/FORMER
TRUSTEE,

Respondent-Appellee.

UNPUBLISHED
September 23, 2003

No. 236974
Allegan Probate Court
LC No. 00-050929-TT

DENISE BUNDE-MORRIS/PERSONAL
REPRESENTATIVE,

Petitioner-Appellant,

V

FIFTH THIRD BANK/TRUSTEE,

Respondent-Appellee.

No. 239889
Allegan Probate Court
LC No. 239889

Before: Donofrio, P.J., Fort Hood and Schuette, JJ.

PER CURIAM.

In this consolidated appeal, petitioner, Denise Bunde-Morris, personal representative of the Kurt A. Bunde Deceased Trust (the trust), appeals as of right a probate court order denying objections to the accountings filed in the matter, denying a motion to replace the trustee, discharging the guardian ad litem, and clarifying that a prior order was not meant to prevent Old Kent Bank (now Fifth Third Bank), as trustee, from making regular distributions from the trust in accordance with the trust documents. Petitioner only challenges the denial of the objection to the

accountings and raises procedural issues. We find no merit in petitioner's substantive or procedural challenges and affirm the probate court's order.

Petitioner first argues that the probate court erred when it ruled on her "Objection to Accounting of Trustee" because she did not have notice of and was not prepared for a hearing on the objection. She further asserts that this Court should remand the cause to the probate court for a hearing on the matter. We disagree. Due process in civil cases requires notice of the nature of the proceedings, *Van Slooten v Larsen*, 410 Mich 21, 53; 299 NW2d 704 (1980), and an opportunity to be heard in a meaningful time and manner. *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000).

Petitioner filed several motions before the probate court including an objection to the accounting of the trustee, a motion to replace the trustee, and a motion for the removal of the guardian ad litem, Judith Zock. A hearing was scheduled for and occurred on April 19, 2001 before the probate court. Petitioner was aware of the hearing and attended in propria persona, albeit arriving approximately seven minutes late. Following the hearing, petitioner attempted to set a date for a hearing regarding her objection to the accounting of the trustee when she was informed that the court had already heard her objection at the April 19, 2001 hearing. The probate court had issued an order on April 23, 2001 that, among other things, denied petitioner's objections to the accountings. The probate court later issued an order on February 7, 2002 clarifying the April 23, 2001 order stating specifically that petitioner's objection to the accounting of Old Kent Bank had been denied after the April 19, 2001 hearing.

At the April 19, 2001 hearing, the court asked petitioner to present an offer of proof regarding her reasons for her motions. Petitioner did not address the issues she raised separately, but rather engaged in a somewhat convoluted and lengthy soliloquy that touched on all three issues. As part of her discussion, petitioner specifically stated, "I have statements here from Old Kent Bank. . . . I have records here that they pay out Mr. Silverman¹ monthly, in thousands of dollars." Following petitioner's discussion, the court requested a response from Adam Parsons, who was in attendance representing both the prior trustee, Century Bank & Trust, and the current trustee, Old Kent Bank. First, Parsons responded to petitioner's motion to replace the current trustee and then addressed the issue regarding the accounting of the previous trustee, Century Bank. Then he continued and addressed the issue regarding the accounting of the current trustee, Old Kent Bank. Parsons began by stating the following:

Finally, your Honor, the last thing which I believe is before the Court today is an accounting by Old Kent Bank, - or an objection to the accounting. I think in this Ms. Morris is just objecting to the expenditure of money by the trust in meeting it's fees or paying the fees. It's not a proper objection. . . .

¹ Alan Silverman is the attorney handling legal matters for the trust at issue.

Later, petitioner interrupted Parsons and commented on another matter, but never stated anything to alert the court that she was unaware of, or unprepared to speak on the accounting of the current trustee, Old Kent Bank.

Our review of the record reveals that contrary to her contentions on appeal, petitioner was aware that her objection to the accounting of the trustee, Old Kent Bank, was to be heard and she did in fact address it at the hearing. Petitioner heard the proceedings, took part in them, and had ample time to raise concerns before the court on this issue. We are satisfied that petitioner was accorded with notice of the nature of the proceedings as well as an opportunity to be heard in a meaningful time and manner. Thus, the probate court did not err when it ruled on petitioner's "Objection to Accounting of Trustee."

Petitioner next argues that the probate court erred when it dismissed her objection to the account of fiduciary of the previous trustee, Century Bank & Trust. A probate court's award in a proceeding objecting to a trustee's final accounting is reviewed for abuse of discretion. See *In re Humphrey Estate*, 141 Mich App 412, 439; 367 NW2d 873 (1985), citing *In re Estate of Weaver*, 119 Mich App 796, 798-799; 327 NW2d 366 (1982). An abuse of discretion is found where a result "is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

At the April 19, 2001 hearing, the court asked petitioner, who was acting in propria persona, to make an offer of proof regarding her motions. Petitioner made generalized statements suggesting that the fees were too high and that they were not properly itemized. Petitioner stated that she had bank statements, copies of the attorney billings, and letters she had written available for the court's review. However, she never submitted any documentation or evidence to the court specifically supporting her assertion that the fees charged and accounted for in the final accounting were in some way unreasonable.

The court questioned Zock, the previously appointed guardian ad litem on behalf of petitioner's minor son, about the Century Bank & Trust final accounting. Zock had independently reviewed the final accounting materials including the attorney billings. Zock stated the bills were itemized by time, by the work that was completed, who performed the task, and dated. In Zock's opinion, none of the expenditures were unreasonable.

It is clear that the evidence from the independent guardian ad litem was uncontroverted since petitioner failed to provide any tangible evidence in support of her objection aside from her personal opinions. In the absence of any evidence presented by petitioner in support of her objection, we find that the probate court did not abuse its discretion when it dismissed petitioner's objection to the account of fiduciary of the previous trustee, Century Bank & Trust.

Finally, petitioner argues that the probate court erred when it did not adjourn the April 19, 2001 hearing because Parsons, who was in attendance at the meeting was representing both the prior trustee, Century Bank & Trust, and the current trustee, Old Kent Bank. On appeal, petitioner asserts that the probate court erred specifically because the court should have adjourned the hearing in order for the current trustee to secure alternate counsel due to a conflict of interest since Parsons also represented the previous trustee.

In order to preserve an issue for appeal, it must be raised before and addressed by the trial court. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997). Petitioner did not request an adjournment at the hearing, did not make any mention of the existence of a possible conflict of interest regarding Parsons representation, and did not bring this issue to the probate court's attention in any manner whatsoever. This being the case, this issue is not properly preserved for our review and we decline to address it. *Id.*

Affirmed.

/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood
/s/ William D. Schuette